

GUARDIANSHIP AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates the Utah Protective Proceedings Act within the Probate Code.

Highlighted Provisions:

This bill:

▸ defines terms;

▸ creates a method within the courts for the appointment ~~H→~~ , acceptance, and

termination ~~←H~~ of a guardian or conservator

for ~~H→~~ [a-minor] minors ~~←H~~ or ~~H→~~ [an] ←H incapacitated ~~H→~~ [adult] adults ~~←H~~ ;

~~H→~~ [→ eliminates a local school board's ability to designate guardians for students within its district;]

▸ requires a court to enter findings identifying function limitations of a protected person and provides elements for the court to weigh;

▸ allows a parent or guardian to delegate to another by power of attorney not exceeding six months specific authority over a protected person;

▸ allows the court to require a guardian to furnish a bond;

▸ sets parameters for compensation and reimbursement of expenses;

▸ gives the guardian of a minor the same responsibilities as a parent unless limited by the court;

▸ sets procedures for appointment of a guardian for an adult, provides duties, and limits the guardian's authority to what is contained in the court order;

▸ delineates specific authority and actions for conservators;



16l ▶ limits what a conservator may delegate;

16m ▶ allows the Judicial Council to exempt certain classes of guardians and

16n conservators from the filing of management plans and annual reports by court rule; ←H

17 ▶ eliminates expedited guardianship proceedings for residents of the Utah State

18 Developmental Center; and

19 ▶ makes technical corrections.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill takes effect January 1, 2012.

24 **Utah Code Sections Affected:**

25 **AMENDS:**

26 **53A-2-202**, as last amended by Laws of Utah 1998, Chapter 263

27 **53A-2-203.5**, as enacted by Laws of Utah 1998, Chapter 124

989 (c) be reasonable and necessary; and

990 (d) be conducted responsibly.

991 (3) Claims for compensation and reimbursement shall be presented to the conservator
 992 if one has been appointed. If there is no conservator or if the conservator is the person to be
 993 paid, someone affiliated with the person to be paid, or someone within the third degree of
 994 relationship to the person to be paid, the compensation or reimbursement may be approved by
 995 the court. In allowing the claim, the conservator or court may consider the complexity of the
 996 service, the provider's experience, and any other relevant factor.

997 (4) If the court finds the petition is without merit, the petitioner shall pay for the
 998 services and expenses in Subsection (1).

999 (5) If the court determines that the payments are excessive or inappropriate, the
 1000 excessive or inappropriate amount shall be repaid to the estate.

1001 Section 27. Section **75-5c-121** is enacted to read:

1002 **75-5c-121. Fiduciary's personal funds.**

1003 A guardian or conservator has no legal obligation to use the guardian's or conservator's
 1004 personal funds for the protected person's expenses solely by reason of the guardianship or
 1005 conservatorship.

1006 Section 28. Section **75-5c-122** is enacted to read:

1007 **75-5c-122. Monitoring appointments.**

1008 The court may establish a system for monitoring guardians and conservators, including
 1009 their reports. The court may appoint a visitor to review records of or any report filed by a
 1010 guardian or conservator. The court may appoint a visitor to interview the protected person, the
 1011 guardian, or the conservator and to make any other investigation the court directs. The court
 1012 may order a guardian or conservator to submit the assets subject to the guardian's or
 1013 conservator's possession, ownership, or control to an examination made in a manner the court
 1014 directs.

1015 Section 29. Section **75-5c-123** is enacted to read:

1016 **75-5c-123. Liability on reported matters ~~H→~~ -- Rules to exempt reports ~~←H~~ .**

1017 ~~H→~~ **(1)** ~~←H~~ An order, after notice, approving an intermediate report of a guardian
 1017a or conservator
 1018 adjudicates liabilities concerning matters adequately disclosed in the report. An order, after
 1019 notice, approving a final report adjudicates all previously unsettled liabilities relating to the

guardianship or conservatorship adequately disclosed in the report.

Ĥ→ (2) Exemptions from filing management plans and annual reports by specific classes of guardians and conservators may be provided for by the Supreme Court in court rule. ←Ĥ

Section 30. Section **75-5c-124** is enacted to read:

75-5c-124. Previous orders and letters remain valid.

Orders entered and letters issued before the effective date of this chapter remain valid after the effective date of this chapter.

Section 31. Section **75-5c-201** is enacted to read:

Part 2. Appointment of a Guardian for a Minor

75-5c-201. Petition to appoint a guardian for a minor -- Findings -- Procedures.

(1) A minor or a person interested in the minor's welfare may file a verified petition to appoint a guardian. If the petitioner is nominated by will or signed writing, the petitioner shall file a copy of the will or signed writing with the petition.

(2) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing on the petition.

(3) The court shall appoint a guardian for a specified time not to exceed the respondent's 18th birthday if it finds that:

(a) the appointment is in the respondent's best interests;

(b) a qualified person seeks appointment;

(c) the court has jurisdiction and venue is proper;

(d) the required notices have been given; and

(e) (i) the parents consent to the appointment;

(ii) all parental rights have been terminated; or

(iii) the parents are unwilling or unable to exercise their parental rights.

(4) In other cases, the court may dismiss the petition or make any other disposition that will serve the respondent's best interests.

(5) If the minor is 11 years of age or older and not a resident of Utah:

(a) the school district in which the guardian resides is a necessary party;

(b) the petitioner shall serve on the superintendent of the school district in which the minor would attend school in Utah;

(i) a certificate from the police authority in the jurisdiction where the minor has lived during the previous two years stating whether there have been any criminal or delinquency charges filed against the minor and whether the minor is the subject of an investigation in that

1237 (d) prosecute, defend, and settle legal actions, including administrative proceedings, on
 1238 behalf of the protected person;

1239 (e) obtain legal advice and representation on behalf of the protected person;

1240 (f) pay the protected person's debts;

1241 (g) give gifts, donations, or contributions on behalf of the protected person within the
 1242 limits of Section 75-5c-409;

1243 (h) file tax returns on behalf of the protected person and pay taxes owed by the
 1244 protected person; and

1245 (i) provide for the support, care, comfort, education, and welfare of individuals entitled
 1246 to the protected person's support.

1247 Section 40. Section **75-5c-306** is enacted to read:

1248 **75-5c-306. Restrictions on the guardian's authority.**

1249 (1) The guardian may not:

1250 (a) consent to commitment of the protected person to ~~H→~~ [a mental retardation] an
 1250a intermediate ~~←H~~ facility ~~H→~~ for people with an intellectual disability ~~←H~~, but
 1251 shall petition the court for an order under Title 62A, Chapter 5, Part 3, Admission to ~~H→~~ [Mental
 1252 Retardation] an Intermediate Care ~~←H~~ Facility ~~H→~~ for People with an Intellectual
 1252a Disability ~~←H~~ ;

1253 (b) consent to commitment of the protected person to a local mental health authority,
 1254 but shall petition the court for an order under Title 62A, Chapter 15, Part 6, Utah State Hospital
 1255 and Other Mental Health Facilities;

1256 (c) consent to sterilization of the protected person, but shall petition the court for an
 1257 order under Title 62A, Chapter 6, Sterilization of Handicapped Person;

1258 (d) consent to termination of the parental rights in the protected person or of the
 1259 protected person's parental rights in another, but shall petition the juvenile court for an order to
 1260 terminate parental rights under Title 78A, Chapter 6, Part 5, Termination of Parental Rights
 1261 Act; or

1262 (e) except as provided in Subsection 75-5c-305(5), exercise the duties or authority of a
 1263 conservator unless appointed as a conservator.

1264 (2) The court order shall address whether the guardian may:

1265 (a) consent to the admission of the protected person to a psychiatric hospital or other
 1266 mental health care facility;

1267 (b) consent to participation in medical research, electroconvulsive therapy or other